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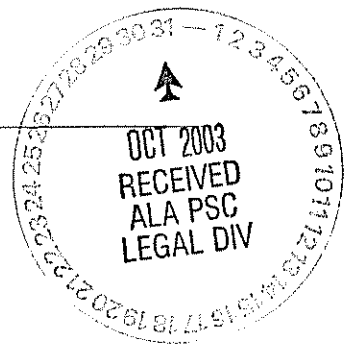

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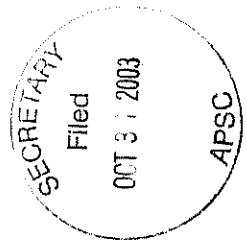

Via Federal Express

Mr. Walter L. Thomas, Jr.
Secretary
Alabama Public Service Commission
RSA Union Building, Room 850
100 North Union Street
Montgomery, AL 36104

Re: Docket No. 29016
Petition for a Declaratory Order regarding Classification of IP Telephony Service
Comments of the Voice on the Net Coalition

Dear Mr. Thomas:

Transmitted herewith on behalf of the Voice on the Net Coalition are an original and ten (10) copies of comments in response to the above-referenced Petition.

Please date-stamp the "Receipt" copy of this filing and return it in the enclosed, self-addressed, stamped envelope. Please refer all questions and correspondence regarding this filing to the undersigned.

Very truly yours,

Susan M. Hafeli

Enclosures

ALABAMA PUBLIC SERVICE COMMISSION

IN RE: Petition for a Declaratory Order regarding classification of IP Telephony Service

DOCKET 29016

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net ("VON") Coalition[1] files these Comments in the above-captioned proceeding, in which the Alabama Public Service Commission (the "Commission") requests comment on whether the Commission has jurisdiction to regulate Voice over Internet Protocol ("VoIP") service on an intrastate basis and, if so, whether the Commission should exercise it.[2]

The VON Coalition urges the Commission to refrain from taking any action to regulate VoIP. VoIP is an application that is part of an information service. Moreover, it is impossible to separate the interstate and intrastate aspects of VoIP. Jurisdictional issues aside, however, it is good public policy for Alabama not to regulate VoIP. The development of VoIP is having a gradual but profound and beneficial impact. Use of VoIP is drastically reducing the cost of international communications and creating a foundation for broadband communications that have much greater capacity and functionality than is offered by the public switched telephone network. There is no evidence that these benefits are offset by any harm to traditional regulatory

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[1] The VON Coalition consists of companies that are developing and offering voice products and services for use on the Internet and Internet Protocol ("IP") networks. Largely through the efforts of VON Coalition members, including Intel, iBasis, ITXC, pulver.com, Sonus Networks, Sylantro, and Texas Instruments, packet-switched voice services are emerging as an exciting new technology benefiting consumers throughout the world. Since its inception, the VON Coalition has consistently advocated that federal and state regulators maintain current policies of refraining from extending legacy regulations to Internet services, including VoIP.

[2] *In Re: Petition for a Declaratory Order regarding Classification of IP Telephony Service,* Docket 29016, Order Establishing Declaratory Proceeding (August 2003).

goals, including universal service. Finally, any effort at regulation would be premature, since the Federal Communications Commission ("FCC") has several proceedings pending that relate to VoIP and has announced its intentions to address VoIP regulation in a stand-alone proceeding.

Background

Voice on the Internet. The development of voice over IP products and services is tied closely to the development of the Internet generally. Voice is simply another application being deployed on these networks, often in combination with other applications. These applications are possible, in part, because the Internet offers openness, thereby encouraging innovation.[3] (In contrast, the Public Switched Telephone Network ("PSTN") operates as a closed system on which it is impossible for innovative developers to build new applications. The failure of Advanced Intelligent Networking illustrates the problem of closed systems impeding the development of innovative products and services.) As such, the Internet permits entrepreneurial firms to develop new hardware and software applications that can seamlessly fit into the network. As computer processing power increases, VoIP products and services are poised to make communications more innovative, affordable, and universal.

The Internet and other IP networks offer an inherent efficiency, reliability, and functionality for communications, particularly those that combine different kinds of data, including voice. The conventional circuit-switched PSTN works on the model that each customer's equipment must have a continuous connection to a telephone company switch, whether or not the connection is actually in use. For long-distance services, a continuous link must be established and maintained between each pair of users for the duration of a call, regardless of the amount of information sent through that path. By contrast, the Internet trades

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[3] *See, e.g.*, Isenberg, David, "The Dawn of the Stupid Network," *ACM Networker 2.1*, at 24-31 (February/March 1998), available at http://www.isen.com/papers/Dawnstupid.html.

increased use of computer processing for a decreased use of transmission facilities and automatically re-routes packets around problems such as malfunctioning routers or damaged lines, without relying on a separate signaling network. As the cost of computer processing continues to decrease and the demand for communications bandwidth by consumers increases, IP networks increasingly offer a more economical and robust means for providing communication connections.

Propelled in part by the U.S. Government's "hands-off" regulatory approach, the development of the Internet and voice on the Internet is having a gradual but profound and beneficial impact on the United States and the world. Use of VoIP is drastically reducing the cost of international communications and creating a foundation and demand for broadband communications that have much greater capacity and functionality than is offered by the PSTN. In the U.S., hundreds of thousands of low-income immigrants have used VoIP to dramatically lower the cost of communicating with friends and relatives outside the United States, through either personal computer-based VoIP or VoIP used by prepaid calling card companies. Phone-to-gateway network configurations provide those without a computer or broadband service what is often their only access to the benefits of the Internet.

Perhaps the most dramatic impact of VoIP has been in certain foreign markets, where VoIP has been a leading force for lowering costs to consumers, increasing competition, and increasing deployment of broadband. VON Coalition members have persuasively invoked the U.S. regulatory model in lobbying overseas governments, such that in former monopoly markets the first steps toward deregulation have included implementing low-cost VoIP. For example, one VON Coalition member enabled a local carrier in Bolivia to take advantage of recent deregulation and, with no capital expenditure, become a domestic and international long distance

carrier on the day Bolivia deregulated its telephony markets. Less than two years later, that carrier now has more than 40% market share in several regions of the country and averages 10-15% market share country-wide. Consumer rates for voice communications in Bolivia have been reduced 40% in a year. Similarly, rates to and from India have fallen remarkably since that country's April 2002 deregulation and are continuing to fall. Much of the voice traffic to and from India is now traveling over the Internet, with a recent iLocus study concluding that VoIP is positioned to account for over 60% of India's international long distance traffic by the year 2007.[4] India has been able to accomplish this because of the rapid deployment, low capital expenditures and flexibility afforded by VoIP.

VoIP is also seeing growth in deployment by enterprises for their internal networks.[5] Corporations and other large institutions are adding voice capability to their Internet connections and data networks in order to save money and increase efficiency. For instance, the U.S. Department of Commerce recently added voice capability to its data network. Deployment in the enterprise environment ranges from point solutions, which involve the installation of key applications to address pressing problems, to network upgrades and more global solutions intended to establish a unified network capable of carrying data and voice traffic.

Personal computers increasingly offer VoIP capability. For instance, Microsoft's most recent operating systems include an application that enables voice communications. The increased deployment of consumer broadband, with its always-on connectivity, will also fuel the

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4 "VoIP to grab 61 percent of ILD traffic by 2007," *Convergence plus* (June 9, 2003), available at http://www.convergenceplus.com/jun03%20india%20telecom%2002.html

5 A number of resources discuss business issues and technology considerations associated with enterprise deployment of VoIP. For example, the consulting firm Gartner has developed a five-layer model to assist enterprises planning to implement VoIP and IP telephony. *See* "Voice over IP: A Layered Look," (July 25, 2003), available at http://www4.gartner.com/pages/story.php.id.9324.s.8.jsp.

growth of these services. A new group of entrepreneurs has begun offering innovative voice applications to residential and small business consumers who have broadband connections, including unlimited local and long-distance calling and on-line call logs. With Free World Dialup ("FWD") 3.0, for example, users of different broadband technologies (cable, DSL, Ethernet, satellite, etc.) can place calls over the Internet to other FWD members without ever accessing the PSTN. Unlike a traditional calling arrangement in which long-distance calls generate usage-sensitive charges, FWD subscribers use a broadband connection and VoIP capability to make calls for free. The extraordinary success of Yahoo Japan's voice over broadband service is confirmation of the potential for voice applications to drive the deployment of broadband and for broadband customers to use their high-speed connections for voice communications.[6]

Despite this growth, the deployment of VoIP has not had significant impact on the revenue of traditional, domestic circuit-switched telephone companies. The use of VoIP by immigrants, in the enterprise setting, and by broadband consumers is not coming at the expense of incumbent local exchange carrier ("ILEC") access charge revenue.

United States policy regarding VoIP. Since the inception of voice over the Internet, the FCC has consistently declined to regulate. The FCC articulated its policy in its 1998 *Universal Service Report to Congress*, which discusses various scenarios for what it called "IP telephony."[7]

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6 *See* "Yahoo! BB Comprehensive Broadband Service Progress Report," (Oct. 7, 2003) (Yahoo IP telephony service "BB Phone" users exceed three million mark), available at http://www.softbank.co.jp/en/newsrelese/2003release/e031007_2.htm. Commercial service was launched on April 25, 2002; approximately one year later the number of users broke the two million mark.

7 *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501, ¶¶ 83-93, 98 (1998) (*"Report to Congress"*) (also referred to as the "Stevens Report"). The *Report to Congress* addressed many of the issues raised in a 1996 petition for rulemaking asking that IP telephony software and hardware providers be classified as common carriers. *Id.* at ¶ 83

The *Report to Congress* discusses the difficulty of categorizing VoIP and the extent to which many of its deployments have characteristics of unregulated, information services.[8] As a result, the FCC expressly deferred any definitive pronouncements regarding VoIP, including phone-to-phone VoIP.[9] As the FCC explained, "[w]e recognize that new Internet-based services are emerging, and that our application of statutory terms must take into account such technological developments. . . . We do not believe . . . that it is appropriate to make any definitive pronouncements [regarding VoIP] in the absence of a more complete record focused on individual service offerings."[10]

Universal service considerations provided further support for the FCC's decision to defer action. The FCC recognized that when an exempt provider purchases connectivity to its users via business lines, that provider indirectly contributes to universal service by generating telecommunications revenue in the form of tariffed rates and line charges. *Id.* at ¶ 97. Moreover, the FCC found that since the Telecommunications Act of 1996 (the "1996 Act") made a decisive break from the practice of implicit universal service subsidy structures, permitting

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n. 172; *see America's Carriers Telecommunications Association, Provision of Interstate and International Interexchange Telecommunications Service via the "Internet" by Non-Tariffed, Uncertified Entities, Petition for Declaratory Ruling, Special Relief, and Institution of a Rulemaking,* RM-8775 (filed March 4, 1996).

8 As noted in a 1999 FCC Working Paper, "[a]s more services are offered that use the Internet Protocol in a packet-switched environment, it becomes increasingly difficult to determine where the telecommunications service ends and the information service begins." Oxman, Jason, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31, at p. 22. "Despite this difficulty, however, it remains important for the FCC to maintain the unregulated status of data services offered over telecommunications facilities." *Id.*

9 *Report to Congress* at ¶ 83.

10 *Id.* at ¶ 90.

enhanced service providers to purchase connectivity via end-user tariffs rather than access tariffs "comports with the plain language of the 1996 Act and the public interest."[11]

On the international stage, the FCC has consistently and repeatedly voiced its support for the non-regulation of advanced technologies, including VoIP. For example, FCC Chairman Powell urged attendees at the International Telecommunications Union's Second Global Symposium for Regulators to give "broadband and digital technologies" a minimally regulated environment "that is nurturing and will allow them to blossom and develop into the great platform that we envision."[12] Referring specifically to VoIP, Chairman Powell noted that "[i]n the United States we have yet to choose to regulate IP telephony and are confident of that decision. We do not assume it is simply a new form of an old friend."[13] In 2002, FCC Commissioner Martin noted that "VoIP presents an incredible opportunity for consumers worldwide and we have found our approach has encouraged its development. At the same time, VoIP challenges settled definitions and preconceptions about what is voice and data, who provides which technology, and which regulatory boxes they should occupy."[14]

The FCC currently has before it three pending proceedings involving the continued exemption of VoIP from the existing regulatory framework for telecommunications carriers:

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11 *Id.* at ¶ 147. In the FCC's recent universal service rulemaking, the VON Coalition supported a proposed contribution methodology that assesses providers of switched connections based on their working telephone numbers. *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

12 *Remarks of FCC Chairman Michael K. Powell*, ITU 2nd Global Symposium for Regulators, Geneva, Switzerland (December 4, 2001).

13 *Id.*

14 *Welcoming Remarks by Commissioner Kevin J. Martin to the African VoIP Conference*, Supercomm 2002, Atlanta, Georgia (June 5, 2002).

Petition of AT&T for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361; *Petition of pulver.com for Declaratory Ruling that pulver.com's Free World Dialup is neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45; and *Petition of Vonage Holdings Corporation for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket No. 03-211. In addition, the FCC is considering VoIP in other pending proceedings, including its intercarrier compensation, wireline broadband, universal service, and 911 dockets.[15]

Recognizing the importance of VoIP issues to all carriers, not just wireline telecommunications carriers, the Commission has announced plans to hold a forum within the next two months to explore VoIP issues.[16] To avoid the prospect of regulating "by accident," Chairman Powell contemplates a thorough discussion of VoIP before the FCC takes any action:

> FCC Chairman Michael K. Powell today warned against the dangers of "regulating by accident" new Internet protocol-based services and stressed the importance of thorough discussion of exactly what rules are needed in an IP world. He also said he envisioned federal policy-makers taking an increasingly dominant role over communications services and suggested that federal and state policy-makers begin discussing how that should be handled.
>
> "What worries me most is that we don't regulate what's right, but that we regulate by accident," dropping Internet services into old regulatory categories that aren't appropriate, rather than developing the appropriate policies for such services through "thorough discussion," Mr. Powell said during a keynote speech today at the U.S. Telecom Association's annual conference.

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15 *Vonage Petition* at 3-4, citing *Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9613 (¶ 5), 9616 (¶ 12), 9621 (¶ 24), and 9629 (¶ 52) (2001); *Wireline Broadband NPRM*; *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 17 FCC Rcd 3752 (2002); and *Revisions of the FCC's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 25576, 25614 (¶ 113) (2002).

16 Kirby, Paul, "FCC Forum to Explore VoIP Issues," *TR Daily* (Oct. 23, 2003).

> Mr. Powell said the right approach was to start from the "cleanest slate possible" for Internet-based services, then decide what rules should be applied. That would be preferable, he said, to starting with extensive common carrier regulation and determining what rules aren't necessary. "I want to build from the bottom up, if necessary," he said. "I don't think any of this means no regulations or lots of regulations. It means the right regulations for this service."
>
> . . . "I do think there are some critical questions that have to do with the rational, efficient way interstate commerce is going to be regulated," he said. "For the smoothest functioning of interstate commerce," it will need to be a largely federal system, Mr. Powell said.
>
> "I think it's an important question, and we should be willing to discuss it in the open," he said. Mr. Powell recommended discussions between federal and state regulators to determine their appropriate roles, although he said the system likely would need to be "much more federal."
>
> Mr. Powell raised questions about recent state initiatives to regulate voice-over-Internet protocol services or wireless services, citing those as examples of the kind of "regulating by accident" that the industry needed to avoid.[17]

Meanwhile, several states, including Alabama, have taken action or begun proceedings that could lead to regulation of VoIP.[18] Not all the state developments are problematic, however.

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[17] Hammond, Brian, "Powell Wants Comprehensive Look at Internet Policy, Sees Need for Bigger Federal Role," *TR Daily* (Oct. 14, 2003).

[18] *See, e.g.*, NY PSC Case 01-C-1119, *Complaint of Frontier Telephone of Rochester against US DataNet Corporation*, Order Requiring Payment of Intrastate Carrier Access Charges (May 31, 2002) ("*DataNet*") (concluding that providers of retail intrastate phone-to-phone IP telephony services are required to pay intrastate access charges on calls that originate and terminate in New York). The *DataNet* decision on its face is limited to a specific complaint concerning DataNet's services and does not address VoIP generally. *DataNet* at 9. Moreover, it is not apparent that the VoIP aspect of DataNet's service was relevant to the NY PSC, since, as the state commission noted, DataNet's use of IP "is only incident to its own private network," and a "substantial portion of its traffic uses no IP conversion at all and is handled by interexchange carriers." *Id.* at 8. Nonetheless, to the extent the NY PSC decision is viewed as imposing regulation on a VoIP service, the VON Coalition would oppose such a policy, for many of the reasons described below. For one, the decision misconstrues the FCC's *Report to Congress*. Contrary to the *DataNet* decision, the FCC has not ruled that phone-to-phone VoIP is a telecommunications service and it has not approved the imposition of access charges on IP

The Florida legislature has adopted a statute that precludes public service commission regulation of VoIP and another, Pennsylvania, is considering legislation to codify the non-regulation of VoIP.[19]

Discussion

I. State action that is inconsistent with federal law or policy is subject to preemption

It may be fitting for the Commission to consider the full ramifications of any action that may be proposed as a result of this proceeding. Specifically, it may not be the best use of scarce Commission resources to examine a matter that is likely to be pre-empted by the FCC or courts.

It is well-established that that a federal agency, acting within the scope of its delegated authority, may preempt inconsistent state regulation.[20] Pursuant to Section 2(b)(1) of the Communications Act of 1934, as amended, the FCC is empowered to preempt state regulation of intrastate communications when state decisions regarding intrastate communications would negate, thwart, or impede the exercise of lawful federal authority over interstate

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telephony service providers. Rather, the FCC expressly deferred any decision on those issues. *Report to Congress* at ¶¶ 89-91. For another, continued forbearance on the part of federal and state regulators encourages VoIP deployment, thereby promoting national objectives, such as broadband deployment and increased competition, without any adverse consequences for other policy goals. VoIP is still in an early stage of deployment and attempts at regulation will only stifle innovation and investment. Constructing any actual regulation is also problematic, since it is typically difficult or impossible to distinguish voice from other applications traveling over an IP network or to distinguish jurisdictional boundaries, and these complexities are all the more substantial for such a rapidly-evolving set of technologies.

19 Section 364.01(3), Fla. Statutes finds that "the provision of voice-over-Internet protocol (VOIP) free of unnecessary regulation, regardless of the provider, is in the public interest." Pennsylvania Senate Bill 900, *an Act Relating to Telecommunications*, establishes in Section 5305 a five-year tax and regulatory exemption for VoIP service. SB900 is available at http://www.legis.state.pa.us/2003%5F0/sb0900p1202.htm.

20 *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368-369 (1986).

communications.[21] The FCC has demonstrated that it will exercise its preemption powers in such circumstances. In 1992, for example, the FCC preempted an order of the Georgia Public Service Commission that barred BellSouth's offering of voice mail service in Georgia.[22]

Inconsistent state action also may be preempted by a federal court, as occurred recently in Minnesota when the Minnesota District Court permanently enjoined the Minnesota Public Utilities Commission ("MPUC") from enforcing its September 11, 2003 order asserting jurisdiction over VoIP provider Vonage Holdings Corp. ("Vonage") and requiring compliance with MPUC telephone regulation.[23] Although briefed on federal law, the MPUC had concluded that it was "not necessary for the [MPUC] to determine whether VoIP service is a telecommunications service or an informational service under federal law, and the [MPUC] will not do so."[24] The District Court disagreed. Unlike the MPUC, which choose to disregard federal law, the court found federal law controlling:

> [I]t is clear that Congress has distinguished telecommunications services from information services. The purpose of Title II is to regulate telecommunications services, and Congress has clearly stated that it does not intend to regulate the Internet and information services. Vonage's services do not constitute a telecommunications service. It only uses telecommunications, and does not provide them. *The Court can find no statutory intent to regulate VoIP, and until Congress speaks more clearly on this issue, Minnesota may not regulate an information service provider such as Vonage as if it were a telecommunications provider.* What

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21 *Id.* at 375; *see also California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) and *Public Utility FCC of Texas v. FCC*, 886 F.2d 1325, 1331 (D.C. Cir. 1989).

22 *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation,* 7 FCC Rcd 1619 (1992) (state action preempted as inconsistent with FCC policy to allow enhanced services, such as voice mail, to be provided on an unregulated basis).

23 *Vonage Holdings Corp. v. Minnesota Public Utilities Commission et al.*, Memorandum and Order, Civil No. 03-5287 (MN D.C., Oct. 16, 2003) (*Vonage v. MPUC*).

24 *In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holdings Corp. Regarding Lack of Authority to Operate in Minnesota,* Order Finding Jurisdiction and Requiring Compliance, Docket No. P-6214/C-03-108 (Sept. 11, 2003).

> Vonage provides is essentially the enhanced functionality on top of the underlying network, which the FCC has explained should be left alone.[25]

In the instant case, the FCC has adopted a policy that excludes VoIP services from telecommunications regulation. The Commission may not disregard this federal policy. A finding by the Alabama Public Service Commission that VoIP services are subject to state public utility regulation would conflict with this federal policy and be subject to federal preemption.

II. Public policy is served by continued forbearance

VoIP offers substantial benefits. IP voice services are providing an opportunity for continued innovation through the use of an open architecture, are having a positive impact on international communications and the U.S. balance of trade, and are facilitating the deployment of broadband for which the public has shown significant and continuing demand. Increasing VoIP deployment promotes these and other national objectives with little or no countervailing costs. At the federal level, VoIP is not threatening universal service support mechanisms or the access revenues of incumbent local exchange carriers.[26] No disadvantages appear to exist at the state level, either. The Commission has not identified any adverse consequences to Alabama consumers as a result of VoIP activity, nor has it identified any detrimental effects that warrant

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25 *Vonage v. MPUC* at 20 (emphasis added).

26 One factor contributing to this minimal impact is a *de minimis* penetration rate. AT&T, for example, describes IP telephony services as representing no more than 1% and 5% of all interexchange calling. *Petition of AT&T for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, AT&T Petition at 27. Purchases of underlying telecommunications inputs by ISPs generate indirect contributions to universal service support mechanisms. Further, much of the deployment of VoIP has focused on international traffic or enterprise deployment, much of which is outside the funding regime for universal service support. Impacts are further minimized by current rules governing access charges and universal service that accommodate information service provider ("ISP") usage. Under an access charge exemption dating to the 1980's, ISPs compensate local exchange carriers through the purchase of business lines, not switched access.

regulatory review or oversight. Under these circumstances, public policy is best served by continued inaction at both the federal and state levels.

The FCC, which to date has chosen only to monitor VoIP, currently has a number of open proceedings involving the continued exemption of VoIP services from the regulatory framework and has proposed a forum within the next two months to address VoIP issues. These proceedings offer the FCC the opportunity to consider the diverse viewpoints of interested parties, evaluate the effects of different VoIP services on both intercarrier compensation and universal service, and determine the appropriate regulatory response, if any, to specific VoIP services. Given express national policies and the complexities associated with IP services, including the inseparability of interstate and intrastate IP communications, it is for the FCC – not the individual states – to determine this response. For example, as it did with Internet Service Provider ("ISP") traffic, the FCC may determine that VoIP traffic is jurisdictionally interstate, thereby placing it under the purview of federal regulators rather than state public utility commission.[27] The FCC may take appropriate action to avoid a patchwork of state regulation, which risks a chilling effect on innovation and competition:

> If federal rules governing Internet telephony are problematic, state regulations seem even harder to justify. . . .There is a good argument that Internet services should be treated as inherently interstate. The possibility that fifty separate state commission could choose to regulate providers of Internet telephony services within their state[s] (however that would be defined), already may be exerting a chilling influence on the Internet telephony market.[28]

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[27] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999)(subsequent history omitted); *In the Matter of Starpower Communications v. Verizon South, Inc* , 17 FCC Rcd 6873, ¶ 30 (2002) ("ISP-bound traffic is jurisdictionally interstate.").

[28] Kevin Werbach, FCC Office of Plans and Policy, *Digital Tornado: The Internet and Telecommunications Policy,* at 40 (March 1997).

The FCC's adoption of its hands-off approach to VoIP is attributable, in part, to the substantial complexities associated with defining individual voice offerings and drawing distinctions between the regulatory classifications of "telecommunications services" and "information services" in the face of this rapidly-evolving technology. As the FCC explained in its *Report to Congress*, "[w]e recognize that new Internet-based services are emerging, and that our application of statutory terms must take into account such technological developments. . . . We do not believe . . . that it is appropriate to make any definitive pronouncements [regarding IP telephony] in the absence of a more complete record focused on individual service offerings."[29] That individual focus is required because VoIP includes a wide variety of network architectures, technologies and applications, as the petitioners themselves concede.[30] Complicating these definitional tasks is the fact that all IP traffic travels as indistinguishable packets of digital bits, thereby blurring the lines between traditional services and categories. There currently exists no method to identify or distinguish VoIP from other IP traffic, or to determine the jurisdictional nature of the traffic. Any attempt by the provider to determine the content or jurisdiction of the transmission necessarily raises significant privacy issues that do not exist in the traditional circuit-switched environment. In addition, one of the inherent characteristics of VoIP, and one of its advantages, is that it is entirely geographically neutral. There is no dedicated transmission facility required, there are no facilities required to be located locally. Internet traffic can travel anywhere in the world with no material difference in cost, and facilities which act on the call can be (and are) located anywhere.

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29 *Report to Congress* at ¶ 83.

30 Docket 29016, Order Establishing Declaratory Proceeding at 2 (noting that the petitioning incumbent carriers admit that "the details of the different IP Telephone Service configurations are complex and varied.").

Further, VoIP remains a nascent industry. Premature intervention risks stifling the innovation and competition that are hallmarks of nascent industries, and is at odds with the federal statutory mandate of Section 230(b) to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*"[31] As a nascent industry, VoIP has not had a significant impact on the revenues of traditional domestic circuit-switched telephone companies or on the funding of universal service support programs.

State action is not necessary to ensure that users of VoIP will have appropriate access to public safety services. VoIP industry representatives have been voluntarily working with the National Emergency Number Association's VoIP/Packet Technical Committee and VoIP Operations Committee to assess the current state of 911 provisioning in VoIP environments and to develop solutions.[32] There are important differences between the provision of 911 for traditional PSTN traffic and for VoIP, but there is every reason to expect that technical solutions exist to provide users with reliable access to public safety services.

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31 47 U.S.C. § 230(b)(2) (emphasis added).

32 Information about the NENA August 2003 VoIP conference, including presentations, is available at http://www.nena9-1-1.org.

Conclusion

Therefore, based on the foregoing, the VON Coalition urges the Alabama Public Service Commission to refrain from regulating VoIP.

Respectfully submitted,

THE VON COALITION

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Dated: October 30, 2003